

# Massachusetts Water Resources Commission

## Meeting Minutes for November 4, 1999

### **Commission Members Present:**

Mark P. Smith	Designee, Executive Office of Environmental Affairs
Marilyn Contreas	Designee, Department of Housing and Community Development
Peter C. Webber	Commissioner, Department of Environmental Management
Lee Corte-Real	Designee, Department of Food & Agriculture
Glenn Haas	Designee, Department of Environmental Protection
Lee Corte-Real	Designee, Department of Food & Agriculture
Mark Tisa	Designee, Department of Fisheries, Wildlife & Environmental Law Enforcement
Joe Pelczarski	Coastal Zone Management
Richard Butler	Public Member
Gary Clayton	Public Member
Bob Zimmerman	Public Member
David Rich	Public Member
Frank Veale	Public Member

### **Others in Attendance:**

Richard Thibedeau	DEM
Michele Drury	DEM/OWR
Vicki Gartland	DEM/OWR
John Magenheimer	DEM/OWR
Ryan Ferrara	MWRA Advisory Board
Gretchen Roobach	MWRA
Lou Wagner	Mass Audubon
Kerry Mackin	Ipswich River Watershed Association
Eileen Simonson	WSCAC
Alexandra Dawson	WSCAC
E. T. Williams	Town of Canton DPW
Maura Callahan	Earth Tech
Jamie Heller	EOEA
Mike Gildesgame	DEM
Jennifer Rodstrom	Neponset River Watershed Association
Brenda Berasi	Neponset River Watershed Association
Tom Mahin	DEP-NERO
Ron Lyberger	DEP/BRP
Rich Tomczyk	EOEA Watershed Team Leader
Michael Woods	Town of Wilmington
Donald Onusseit	Wilmington DPW
Chuck Katuska	Wetlands Restoration and Banking Program
Anthony Zuena	SEA Consultants
Christy Foote-Smith	Wetlands Restoration and Banking Program

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### **Agenda Item #1: Executive Director's Report**

Smith reported that he just returned from a Muddy River event, starting off the restoration project with a \$7 million part of the project. EOEa is still working with the Army Corps of Engineers to see if they can help do the work and fund the project.

Smith reported that he and Thibedeau had the first quarterly meeting with the Corps on the ongoing projects being funded with them. The meeting was both an update of the current situation and discussion about the direction of future work. The Corps is looking at participation in new areas, such as CSO projects. These quarterly meetings will facilitate ongoing coordination.

### **Agenda Item #7: Hydrologic Conditions Report** (taken out of order)

Magenheimer presented the report which in general shows average or above average current precipitation and ground water conditions. NOAA forecasts a continuation of La Niña through the winter, meaning higher than normal precipitation and temperatures. Streamflow conditions also are above normal across the state as are SPI readings. The Palmer Drought Index shows a moist belt for the state through December. Smith noted that a dry or normal winter may still cause trouble in the spring and summer. The task force will meet again after Thanksgiving to continue working on a drought management procedure for the state. The Worcester reservoir system has recovered but still is not at optimum levels.

Zimmerman noted that a study the CRWA is partially funding with Tufts University shows that precipitation in the next 30 years will drop 15-25 percent annually. The extended hot dry summer weather with heavy spring rains is likely to increase. Smith asked that Charles River Watershed Association present the results at a future meeting.

### **Agenda Item #2: Determination of Insignificance under the Interbasin Transfer Act of Hopkinton's proposed water supply project**

Drury summarized the project and the discussion from last month. She noted the potential impacts to the Hopkinton Reservoir were of concern to DEM Forests and Parks who operate the reservoir for flood control and recreation. She requested that when the Towns come in for Water Management Act permits, these issues be looked at under the permit. Magenheimer noted that the full withdrawal that could affect the Reservoir is 1 mgd, and the interbasin transfer is 0.0565 mgd. The analysis showed a very close connection between the wells and the reservoir.

Clayton asked how water will be released downstream on a regular and consistent basis. The staff report should reflect this concern and request DEM to include streamflow and related environmental concerns in its operation of the dam. Haas asked if the WMA could enforce a release from the dam. The response was that the Act could probably not do so, but could regulate the impact of the release. Zimmerman noted that the transfer may not increase Hopkinton's use over its cap, but within the cap, it will increase water use. He noted also that the idea of redundancy of capacity is incorrect, and redundant wells can indeed end up with more water being pumped, particularly during the summer. Drury noted that under the IBT, redundancy is exempt, however, the proponent must demonstrate a "redundant" well is physically constructed in a way that does not allow both sources to be used at the same time. If

the proponent cannot demonstrate that only one well can be used at a time, the IBT considers the new well as an increase in capacity.

Smith noted that DEP should consider looking at maximum day demands in addition to annual average withdrawals as a pumping limitation in the Water Management Act permit.

Haas moved, with a second by Corte-Real, that:

**(a) Hopkinton's proposal to transfer 56,500 gallons per day from the Concord River Basin to the Charles and Blackstone River Basins is determined to be insignificant for the purposes of the Interbasin Transfer Act.**

**(b) The Water Resources Commission also asks that the DEP Water Management Act permit process consider and address any impacts to the Hopkinton Reservoir and other resources from the approximately 1 mgd Hopkinton purchases from Ashland, most of which stays in basin but which may affect the flood control, environmental and recreational purposes of the reservoir.**

**(c) That DEM include these streamflow and related environmental concerns in its dam management plan.**

The motion was passed unanimously by the Commission, with 11 votes in favor and none opposed.

**Agenda Item #3: Determination of Applicability of the Interbasin Transfer Act to the Sithe Edgar Development project, Weymouth**

Drury summarized the project. She noted that the proposed development did not require an increase in capacity in either the MWRA or Quincy water supply systems. Dawson noted that in general WSCAC would like to see the vote the WRC took on connecting a new community to the MWRA water system requiring a vote under the Act extended to a new sewer community joining the MWRA sewer system. She asked that the WRC consider this policy. Mackin noted that exemptions are being authorized by policy rather than being stated in regulations which can set the Commission up for problems. Unless the policy changes are in the regulations, decisions under the policy can be challenged. Smith noted that this kind of issue could be included in next year's work plan.

Clayton moved, with a second by Butler, that

**The Interbasin Transfer Act is not applicable to the proposed connection by the Sithe Edgar Development, LLC to MWRA through the Town of Quincy, as described in the Request for Determination of Applicability dated September 14, 1999 and subject to the June 30, 1999 MWRA Water Connection Policy, #OP.09.**

The motion passed unanimously, with 11 votes in favor and none opposed.

**Agenda Item #4: Determination of Canton's compliance with conditions of the Interbasin Transfer approval for Well #9**

Michele Drury introduced Ernie Williams and Tony Zuena representing the Town of Canton and Jennifer Rodstrom and Brenda Berasi representing NepRWA. Smith noted that since the decision in January 1998, there has been an ongoing dialog between the Town and WRC staff and NepRWA staff regarding the conditions in the original decision and that the Town has been making progress in meeting them. The purpose of the agenda item for this meeting is to amend the wording of the original decision to make measuring compliance more practical and to vote on those conditions the Town has met. In addition, staff will prepare a list of items that will require additional work before the Town can install the well, and a list of conditions the Town must meet prior to operating the well to accompany the amended decision, if the WRC votes to amend.

Drury noted that last month Ian Cooke, Executive Director of NepRWA, presented his comments on the staff report on Canton's compliance with the conditions. A response to NepRWA's comments was prepared and she faxed the response to comments to all WRC members. Copies were also made available at the meeting. The staff report prepared for the October WRC meeting was revised based on comments from the last WRC meeting, comments from NepRWA, and from conversations with DEP and the Town. Drury outlined the main changes to the report and the nature of the amendments recommended.

Drury clarified that regarding the two-to-one mitigation for total withdrawals from the well, after the discussion last month, and after reviewing tapes from the last meeting and consulting with DEM legal staff, it was concluded that while the 1:1 offset must be achieved before water is pumped from the well, the Commission only required a plan for the 2:1 offset be approved before the well is installed. The actual offset could be achieved after the well was on-line. The Town did submit a plan for doing so either through I/I reduction and/or a stormwater management program. The staff recommended a timeline showing the implementation of the two-to-one mitigation be added to the plan before it be approved. The Town will be providing that timeline soon.

Staff feels that the plans required by Conditions B.3 through B.6 under Criterion #3, concerning continuing the existing conservation program, public education, updating the drought/emergency plan to reflect this decision, and reducing residential gpcd, submitted to date by Canton meets conditions of the IBT decision and recommends that the Commission approve the plan. Condition B.7 under Criterion #3 which requires reporting savings achieved from the well will need to be complied with after the well is in operation.

Regarding reasonable instream flow conditions, Drury noted that the Town has committed to installing a gage at the Green Lodge site near the Dedham-Westwood Fowl Meadow well, where significant impacts were modeled. Working with USGS, there is now a good stage-discharge relationship established. That process is continuing and reports will be provided at a later date. Regarding conditions concerning cumulative impacts, staff finds that for the time being, conditions have been met; however, in the future other sources become feasible, staff would have to obtain the details to assess compliance with the Act.

Smith asked for comments or questions on the staff report. There were none. Smith went over Cooke's letter commenting on the staff report and staff's response to NepRWA. The one

clarification was that on page 2 of the staff response to NepRWA, DEM staff will evaluate the relationship between the Green Lodge gage and the Lower Mills gage and identify what 0.28 cfs at Green Lodge means in relation to the Lower Mills gage. It is more appropriate for Staff to do this than the Town. Clayton asked that the response to comments specifically mention that DEM is responsible for this analysis.

Zimmerman asked if there were monitoring wells to indicate whether the two-to-one mitigation will enhance aquifers and instream flow to identify a net benefit to the environment. Haas noted that it would be very difficult to tell what was impacting a monitoring well, whether it was well #9 or ground water conditions. Smith noted that the idea was an important one to study to tell where money is best spent on mitigation efforts. Commissioner Webber suggested that to find out, some kind of controlled study would be important to carry out, but that such a study would not be appropriate to require of a community like Canton at this time.

Dawson noted that wetlands replication does not work but that we continue doing it anyway, and suggested that the WRC should not require mitigation did not produce the intended results. She requested that whatever method is decided upon be measurable, that it can be proven to work and that it is worth the investment.

As there were no additional comments, Smith entertained any motions, noting that the first issues before the Commission were the amendments to the decision. If approved, they would be forwarded to the Secretary of State's office as part of a decision document.

Haas moved with a second by Zimmerman that:

**Part 1: The January 29, 1999 Interbasin Transfer decision by the WRC be amended to state that in order to fully comply with criterion #2:**

- A. Canton must file an ENF with MEPA concerning its sewerage plans;**
- B. The Secretary of Environmental Affairs must issue a certificate on the ENF requiring an EIR that includes the requirements of the WRC decision for minimizing sewerage, as outlined in the original conditions under criterion #2;**
- C. The scope for the Comprehensive Wastewater Management Plan (CWMP)/EIR must be approved by DEP.**

**This must occur before the installation of Well #9.**

**Part 2: Conditions B.1.a and B.1.b under criterion #3 of the January 29, 1999 decision will be amended to state:**

- A. The 1994 SSES must be submitted to DEP for review and approval in light of the conditions of the Interbasin Transfer decision before any water can be pumped from Well #9;**
- B. Future progress with infiltration/inflow reduction will be measured by WRC and DEP staff by reviewing documentation of work completed consistent with the 1994 SSES. Annual reports should provide documentation on an annualized rather than peak flow basis.**

The motion passed unanimously with 11 votes in favor and none opposed.

Butler then moved, with a second by Rich that:

**Concerning Canton's compliance with the conditions of the Interbasin Transfer Approval for Well #9:**

1. The WRC approves Canton's I/I reduction plan, as described in the Final Water Management Plan for Operation of Well No. 9, submitted August 20, 1999. This was provided in compliance with criterion #3, condition B.1.
2. Canton has complied with condition B.3 of criterion 3, continuation of its water conservation plan.
3. The WRC approves Canton's comprehensive public education program as described in the Final Water Management Plan for Operation of Well No. 9, submitted August 20, 1999. This was provided in compliance with criterion #3, condition B.4.
4. The WRC approves Canton's updated drought/emergency plan as described in the Final Water Management Plan for Operation of Well No. 9, submitted August 20, 1999. This was provided in compliance with criterion #3, condition B.5.
5. The WRC approves Canton's plan to reduce its residential gallons per capita per day, as described in the Final Water Management Plan for Operation of Well No. 9, submitted August 20, 1999. This was provided in compliance with criterion #3, condition B.6.
6. Canton has complied with condition a. under criterion #8 for the present time. If in the future, any new local sources are considered, this condition will still apply.

The motion passed unanimously with 11 votes in favor and none opposed.

Smith then asked for a motion to amend the response to comments to NepRWA to include the statement that DEM will evaluate the relationship between the Green Lodge gage and the Lower Mills gage.

Clayton so moved with a second by Veale. The Commission approved the motion unanimously.

Williams thanked the Commission and particularly the staff for their hard work on this project. Smith noted that there are additional conditions that need to be met in the future.

**Agenda Item #5: Prioritization of project proposals for assistance from the Army Corps of Engineers under Section 22 and FPMS**

Gildesgame reviewed the projects discussed at last month's meeting and provided a staff recommendation on prioritization, as follows:

- FPMS:
1. Marshfield Rexhame Polder/Bass Creek
  2. North Reading, Ipswich River/Martin's Pond
  3. Salisbury, Town Creek

- Section 22:
1. SUASCO TMDL study

2. Merrimack River Environmental Assessment and Restoration Studies
3. SUASCO Wetlands Restoration Plan
4. Charles River Wetlands Restoration Plan

Marshfield discussion: Dawson stated on behalf of MACC that the Marshfield project has considerable wetlands and marsh implications. It is a very sensitive area and that improvement of property values is an overriding concern of the Town. She stated her concern that this project should not be a priority. She characterized it as a diked off salt marsh and that the project should not receive more funds. Clayton stated that he would not vote on the issue as Mass Audubon is a land owner directly affected by the proposed action. He stated his belief that Rexhame beach is a state-designated barrier beach and wondered how this project complies with Executive Order 181 which states that the state should not provide resources which would encourage growth and development on a coastal barrier of the Commonwealth.

Thibedeau asked if the project encourages growth. Gildesgame responded that the project is to study the reduction of flooding and land erosion in the area, and that the proponents state that currently those problems do reduce property values. It also is a repetitive loss area recognized by FEMA, that the project would improve drainage systems to reduce flooding and erosion. Clayton noted that this is now a fresh water marsh/ wetland area, and that this project, at Rexhame beach, which is subject to repeated flooding, would have the effect of encouraging growth and development.

Dawson stated that FEMA's interest is to continue paying off property losses over and over. She understands that as an insurance program, they have an interest in doing this, but they are not looking at the environmental issues.

Webber asked if this issue could be put off until a later meeting. Gildesgame responded that the Corps does not yet have a firm budget from Washington, and that therefore, there probably is time to put off the vote on this issue. Zimmerman asked for clarification as to the barrier beach status of the area and whether the project would encourage growth in the area. Smith stated that these issues would be investigated and brought back at the December meeting.

Ipswich River/Martin's Pond discussion: Gildesgame reviewed the proposal in response to a question from Mackin. Tomczyk further described the project and said that the Town wants to see what options are available to relieve flooding in the area and to see what options are available, including stormwater management. Mackin responded that the project seems to have evolved in a positive way over the last year or so from what she originally understood the project to be.

Regarding the Section 22 Projects, Gildesgame summarized the project proposals. He stated that all have or expect to have soon in place the required matching funds. Clayton expressed his approval of the SUASCO TMDL study as a potential contributor to a better understanding of the stresses on the river and the impacts of any interbasin projects. He also said that the Salisbury Town Creek FPMS project proposal should be high on the priority list.

Webber asked how many project proposals had been received. Gildesgame responded that those seven presented were the ones received. Smith noted that a number of projects that might have been proposed for the Corps in the past might now be funded through the Watershed Initiative.

Clayton moved with a second by Webber that:

**The Section 22 projects be prioritized as presented by staff:**

- 1. SUASCO TMDL Study**
- 2. Merrimack Environmental Assessment and Restoration Studies**
- 3. SUASCO Wetlands Restoration Studies**
- 4. Charles Wetlands Restoration Studies**

The motion was approved unanimously.

**Agenda Item #6: Discussion of the applicability of the Interbasin Transfer Act to the Wilmington sewerage project**

Drury provided a brief summary of the issue. The Town is a full sewer system member of the MWRA. When the town's connection to the MWRA was constructed in the 1970s, prior to the enactment of the Interbasin Transfer Act, it was sized to accommodate the wastewater needs of the entire town, even though the whole town was not then served by sewers. Therefore, the transfer is considered to be an existing interbasin transfer from the Ipswich to the Massachusetts coastal basin. Wilmington is in the process of developing a comprehensive wastewater management plan with DEP which will involve sewerage additional unsewered portions of town. Previously, staff for the Commission has determined that additional sewerage of the Town would not trigger the Act as this project would not increase the hydraulic capacity to transfer water out of basin, as the entire capacity of the town was built into the original interceptor.

Mackin had asked that the Ipswich River Watershed Association be permitted to file a request for a determination of applicability under the Act. It was determined by DEM legal counsel that the Association does not have standing to apply as they are not included under the regulations as written and they have no specific property interests in the project.

Zimmerman suggested that because the Ipswich basin is in bad shape, that the Commission should be looking at this issue of the transfer of additional water out of basin. Drury said that the issue is being addressed through DEP's CWMP process. Also, the town is not contemplating sewerage the entire Town. The Secretary's certificate on the project set up a special MEPA procedure for this project.

Mackin addressed the issue of standing. She stated that this decision would be very bad public policy and would go against many legal precedents and protection of the right to dissent. It also seems to go against the Massachusetts Watershed Initiative emphasis on the importance of all stakeholders having a voice in the process. It gives undue authority to the staff of the WRC without a mechanism to ensure that there is a way to bring a project before the WRC if a proponent does not want to. She said that if groups like IRWA are prevented from being able to file a determination of applicability, then there is no way to bring these kinds of projects before this body and have an official decision on a project.

She further stated that the process of determining applicability is not so onerous that it cannot be brought forward in a case like this in a such a stressed basin. Many other organizations would have concerns if their right to bring a matter officially to the WRC were circumscribed. IRWA standing to take part in legal proceedings has been tested and upheld in two Water Management



Act cases. If the WRC is inclined to deny standing to IRWA, she would like the opportunity to put together a legal response. She stated that the regulations at 313 CMR4.04, section 2.a. do not say that the project proponent has to file the determination. In section 1.d, the language does limit the application process to persons proposing an action. She contended that based on 4.04, 2.a, the IRWA would have standing.

Dawson suggested that this is a complicated legal matter that should be separated from the project itself, and that it requires more time and information than available today.

Smith noted that there is no intention to make any decision today; that the issue was brought up for discussion as requested by Mackin. The WRC is willing to look at the process, and there is a way for organizations like IRWA to raise the issues to the WRC. The Commission is open to anyone raising these important issues.

Mackin noted that the project itself does not appear to be exempt from the jurisdiction of the Act as it has not received MEPA compliance or DEP approval. There are other ambiguities in the language. In section 4.02, actions by Wilmington appear to be covered. She also finds that the Act and regulations are missing significant transfers which are meant to be addressed by this law but which are being missed because of this policy of exemption.

Simonson noted that the 1954 law which admitted Wilmington into the MDC system does not deal with impacts, and the WRC must look at the allowance provided by the law for Wilmington to sewer its whole town which was never considered back then. Permission should not last forever. Webber responded that until the law is amended or repealed, it is the law whether or not we are happy with it, and we cannot override it with regulation or policy. He also wanted to hear from the Town.

Mr. Woods said that they consider their sewerage project exempt from the Interbasin Transfer Act. They are aware of the environmental issues, and they have undertaken a number of studies on their system. Most of their capital expenditures have been to take care of these issues. In response to a question from Zimmerman, he said the Town's consultants are looking at the sustainability of the water supply source. They are waiting for the USGS model to be released so it can be used in their planning. The Town has a large stake in the River. The total amount that would be transferred out of basin is about 57,000 gallons per day via this sewer project, and they are offsetting the transfer by removing significant amounts of I/I.

In summarizing the discussion, Smith noted that the Commission's opinion is that the interceptor was in place before the Act came about and therefore the capacity is grandfathered. The fact that the hookup of sewers to the interceptor had not gone through MEPA does not mean that the Act is jurisdictional. Everyone agrees that wastewater was not as clearly dealt with in the Act and regulations as water, and this is a larger issue to address. However, we don't want every sewer extension in the MWRA system to come under the Act. The larger issue may be worth revisiting, Smith stated, even if the Wilmington decision is not changed.

Mackin responded that the entire town could be sewerage without additional review of the environmental impacts, and the reason the law exists is review those impacts. It would be very inconvenient to review all the sewer extensions to the MWRA system, but it is not clear that such review is not required by the Act and regulations. If you don't want it required, the regulations

and act should be rewritten. Otherwise, she stated her belief, that this case does fall under the purview of the Act. There are other towns also who want to sewer out wastewater and the public process part of the process is being shortchanged regarding the environmental impacts. Zimmerman added that most town officials think in terms of 20 years at the most, while environmental decisions must be made now that take a longer view.

There was other general discussion of how the WRC should deal with similar issues in the future and how and if to change its policy of review. Woods restated his belief that the Act does not apply and that the Town is looking to the Commission to formally confirm its position on applicability. He also said that MEPA and DEP and others are looking at many of the environmental issues that were raised at the meeting. Smith clarified that this meeting is for discussion not for deciding on the issue. Mackin requested clarification of WRC intent on the issue. Smith responded that the Commission could consider the issue tabled permanently. Mackin said that if both the exemption applies to Wilmington and the decision on standing remains unchanged, she doesn't agree with either and needs a vote of the Commission that states that. Smith agreed the issue should not be tabled but rather, he would meet with Mackin for a discussion and come back in December for a vote on the two items.

Clayton said that the staff memo includes a recommendation and that there should be a vote but not today. The Town's interest is getting a decision reaffirmed. Veale asked if Mackin would be submitting a memorandum, it would be helpful. She said yes. The Commission decided that the memorandum be submitted to staff in time for counsel's review prior to the December meeting, and no later than November 19th. At the December meeting, the WRC will vote on both the issue of standing and the issue of exemption of the Wilmington project under the Act.

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Minutes approved as amended 12/9/99